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8 **UNITED STATES DISTRICT COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA**
10 **EASTERN DIVISION**
11

12 ROBERT PEREZ,

13 Plaintiff,

14 v.

15 TRANSPORTATION SGT,

16 Defendant.
17

Case No. CV 18-01193 CJC (AFM)

**ORDER DISMISSING COMPLAINT
WITH LEAVE TO AMEND**

18 On June 1, 2018, plaintiff, a prisoner formerly held at the West Valley
19 Detention Center (“WVDC”) in Rancho Cucamonga, California, filed a Complaint
20 (ECF No. 1) in this *pro se* civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff
21 subsequently was granted leave to proceed without prepayment of the filing fees.
22 (ECF No. 4.) The Complaint names as the only defendant an unidentified
23 “Transportation Sgt.,” in his or her official capacity. (*Id.* at 3.)

24 Plaintiff’s single claim appears to arise from allegedly “inhumane [and]
25 dangerous policies” concerning the transportation of inmates to court and state
26 prison. (*Id.* at 5.) That claim is purportedly raised under the Eighth and Fourteenth
27 Amendments for “cruel and unusual punishment as well as medical neglect.” (*Id.*)
28 Plaintiff seeks monetary compensation. (*Id.* at 6.)

1 The Court has screened the Complaint prior to ordering service for purposes
2 of determining whether the action is frivolous or malicious; or fails to state a claim
3 on which relief may be granted; or seeks monetary relief against a defendant who is
4 immune from such relief. *See* 28 U.S.C. §§ 1915(e)(2), 1915A(b); 42 U.S.C.
5 § 1997e(c)(1). The Court’s screening of the pleading under the foregoing statutes is
6 governed by the following standards. A complaint may be dismissed as a matter of
7 law for failure to state a claim for two reasons: (1) lack of a cognizable legal
8 theory; or (2) insufficient facts under a cognizable legal theory. *See Balistreri v.*
9 *Pacifica Police Dep’t*, 901 F.2d 696, 699 (9th Cir. 1990); *see also Rosati v.*
10 *Igbino*, 791 F.3d 1037, 1039 (9th Cir. 2015) (when determining whether a
11 complaint should be dismissed for failure to state a claim under 28 U.S.C.
12 § 1915(e)(2), the court applies the same standard as applied in a motion to dismiss
13 pursuant to Rule 12(b)(6)). In determining whether the pleading states a claim on
14 which relief may be granted, its allegations of material fact must be taken as true
15 and construed in the light most favorable to plaintiff. *See Love v. United States*,
16 915 F.2d 1242, 1245 (9th Cir. 1989). However, the “tenet that a court must accept
17 as true all of the allegations contained in a complaint is inapplicable to legal
18 conclusions.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). Nor is the Court
19 “bound to accept as true a legal conclusion couched as a factual allegation.” *Wood*
20 *v. Moss*, 134 S. Ct. 2056, 2065 n.5 (2014) (citing *Iqbal*, 556 U.S. at 678). Rather, a
21 court first “discounts conclusory statements, which are not entitled to the
22 presumption of truth, before determining whether a claim is plausible.” *Salameh v.*
23 *Tarsadia Hotel*, 726 F.3d 1124, 1129 (9th Cir. 2013). Then, “dismissal is
24 appropriate where the plaintiff failed to allege enough *facts* to state a claim to relief
25 that is plausible on its face.” *Yagman v. Garcetti*, 852 F.3d 859, 863 (9th Cir. 2017)
26 (internal quotation marks omitted, emphasis added).

27 Further, since plaintiff is appearing *pro se*, the Court must construe the
28 allegations of the pleading liberally and must afford plaintiff the benefit of any

1 doubt. *See Hebbe v. Pliler*, 627 F.3d 338, 342 (9th Cir. 2010); *see also Alvarez v.*
2 *Hill*, 518 F.3d 1152, 1158 (9th Cir. 2008) (because plaintiff was proceeding *pro se*,
3 “the district court was required to ‘afford [him] the benefit of any doubt’ in
4 ascertaining what claims he ‘raised in his complaint’”) (alteration in original).
5 However, the Supreme Court has held that “a plaintiff’s obligation to provide the
6 ‘grounds’ of his ‘entitle[ment] to relief” requires more than labels and conclusions,
7 and a formulaic recitation of the elements of a cause of action will not do. . . .
8 Factual allegations must be enough to raise a right to relief above the speculative
9 level . . . on the assumption that all the allegations in the complaint are true (even if
10 doubtful in fact).” *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007)
11 (internal citations omitted, alteration in original); *see also Iqbal*, 556 U.S. at 678
12 (To avoid dismissal for failure to state a claim, “a complaint must contain sufficient
13 factual matter, accepted as true, to ‘state a claim to relief that is plausible on its
14 face.’ . . . A claim has facial plausibility when the plaintiff pleads factual content
15 that allows the court to draw the reasonable inference that the defendant is liable for
16 the misconduct alleged.” (internal citation omitted)).

17 In addition, Fed. R. Civ. P. 8(a) states:

18 A pleading that states a claim for relief must contain:
19 (1) a short and plain statement of the grounds for the
20 court’s jurisdiction . . . ; (2) a short and plain statement of
21 the claim showing that the pleader is entitled to relief; and
22 (3) a demand for the relief sought, which may include
relief in the alternative or different types of relief.

23 (Emphasis added). Further, Rule 8(d)(1) provides: “Each allegation must be
24 simple, concise, and direct.” Although the Court must construe a *pro se* plaintiff’s
25 pleadings liberally, a plaintiff nonetheless must allege a minimum factual and legal
26 basis for each claim that is sufficient to give each defendant fair notice of what
27 plaintiff’s claims are and the grounds upon which they rest. *See, e.g., Brazil v.*
28 *United States Dep’t of the Navy*, 66 F.3d 193, 199 (9th Cir. 1995); *McKeever v.*

1 *Block*, 932 F.2d 795, 798 (9th Cir. 1991) (a complaint must give defendants fair
2 notice of the claims against them). If a plaintiff fails to clearly and concisely make
3 factual allegations sufficient to provide defendants with notice of which defendant
4 is being sued on which theory and what relief is being sought against them, the
5 pleading fails to comply with Rule 8. *See, e.g., McHenry v. Renne*, 84 F.3d 1172,
6 1177-79 (9th Cir. 1996); *Nevijel v. Northcoast Life Ins. Co.*, 651 F.2d 671, 674 (9th
7 Cir. 1981). A claim has “substantive plausibility” if a plaintiff alleges “simply,
8 concisely, and directly [the] events” that entitle him to damages. *Johnson v. City of*
9 *Shelby*, 135 S. Ct. 346, 347 (2014). Failure to comply with Rule 8 constitutes an
10 independent basis for dismissal of a pleading that applies even if the claims are not
11 found to be wholly without merit. *See McHenry*, 84 F.3d at 1179; *Nevijel*, 651 F.2d
12 at 673.

13 Following review of the Complaint, the Court finds that it fails to comply
14 with Rule 8 because it fails to include a short and plain statement of each claim that
15 is sufficient to give any defendant fair notice of what plaintiff’s claims are and the
16 grounds upon which they rest. In addition, its allegations appear insufficient to
17 state any claim upon which relief may be granted against the sole defendant.
18 Accordingly, the Complaint is dismissed with leave to amend. *See Rosati*, 791 F.3d
19 at 1039 (“A district court should not dismiss a *pro se* complaint without leave to
20 amend unless it is absolutely clear that the deficiencies of the complaint could not
21 be cured by amendment.”) (internal quotation marks omitted).

22 **If plaintiff desires to pursue this action, he is ORDERED to file a First**
23 **Amended Complaint no later than thirty (30) days after the date of this Order,**
24 **remediating the deficiencies discussed below.** Further, plaintiff is admonished
25 that, if he fails to timely file a First Amended Complaint, or fails to remedy the
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1 deficiencies of this pleading as discussed herein, the Court will recommend that this
2 action be dismissed without leave to amend.¹

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4 **A. Failure to allege Article III standing**

5 A federal court has an obligation to assure itself of jurisdiction before
6 proceeding to the merits of any case. *See Lance v. Coffman*, 549 U.S. 437, 439,
7 (2007) (“Federal courts must determine that they have jurisdiction before
8 proceeding to the merits.”). Further, a federal court lacks subject matter jurisdiction
9 if a plaintiff fails to establish Article III standing. A plaintiff “bears the burden of
10 establishing these elements.” *Spokeo, Inc. v. Robins*, 136 S. Ct. 1540, 1547 (2016);
11 *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561 (1992).

12 To establish constitutional standing under Article III, a plaintiff seeking
13 compensatory relief must demonstrate that he: “(1) suffered an injury in fact, (2)
14 that is fairly traceable to the challenged conduct of the defendant, and (3) that is
15 likely to be redressed by a favorable judicial decision.” *Town of Chester v. Laroe*
16 *Estates, Inc.*, 137 S. Ct. 1645, 1650 (2017); *see also Wash. Envtl. Council v. Bellon*,
17 732 F.3d 1131, 1141 (9th Cir. 2013) (to satisfy the causality element for Article III
18 standing, “[t]he line of causation between the defendant’s action and the plaintiff’s
19 harm must be more than attenuated”). Additionally, “[i]t is a well-established rule
20 that a litigant may assert only his own legal rights and interests and cannot rest a
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22 ¹ Plaintiff is advised that this Court’s determination herein that the allegations in the
23 Complaint are insufficient to state a particular claim should not be seen as dispositive of
24 that claim. Accordingly, although this Court believes that you have failed to plead
25 sufficient factual matter in your pleading, accepted as true, to state a claim to relief that is
26 plausible on its face, you are not required to omit any claim or defendant in order to
27 pursue this action. However, if you decide to pursue a claim in a First Amended
28 Complaint that this Court has found to be insufficient, then this Court, pursuant to the
provisions of 28 U.S.C. § 636, ultimately may submit to the assigned district judge a
recommendation that such claim be dismissed with prejudice for failure to state a claim,
subject to your right at that time to file Objections with the district judge as provided in
the Local Rules Governing Duties of Magistrate Judges.

1 claim to relief on the legal rights or interests of third parties.” *Coalition of Clergy*
2 *v. Bush*, 310 F.3d 1153, 1163 (9th Cir. 2002) (citing *Singleton v. Wulff*, 428 U.S.
3 106, 113-14 (1976)). Accordingly, “plaintiff must show that *he* . . . suffered an
4 invasion of a legally protected interest that is concrete and particularized and actual
5 or imminent, not conjectural or hypothetical.” *Spokeo, Inc.*, 136 S. Ct. at 1548
6 (internal quotation marks omitted, emphasis added). Finally, “a plaintiff must
7 demonstrate standing for each claim he seeks to press.” *Town of Chester*, 137 S.
8 Ct. at 1650.

9 Here, the Complaint does not set forth any facts concerning plaintiff’s
10 detention at the WVDC: Plaintiff does not allege at what time or times he was
11 detained. Plaintiff indicates that the claim in the Complaint arose on “Jan 1998 thru
12 [sic] May 2018” (ECF No. 1 at 3), and plaintiff states in an introductory paragraph
13 that the Complaint “concerns the inhumane and dangerous policy implemented by
14 the [WVDC’s] Transportation Department for the past 20 years,” (*id.* at 1). But the
15 Complaint does not allege that plaintiff was detained at the WVDC during that time
16 period. Additionally, in his Claim I, plaintiff alleges that “for the past 20 years
17 inmates have been transported to county courts and state prisons” using a “5-man
18 chain.” (*Id.* at 5.) Plaintiff alleges “I was injured numerous times,” but he fails to
19 set forth any supporting facts concerning when or under what circumstances he was
20 injured. (*Id.*) Further, plaintiff alleges that “inmates are subjected to hours of
21 prolonged intense pains [sic],” and that inmates who are “sickly” or diabetic cannot
22 be given treatment by “medics.” Plaintiff, however, does not allege that he
23 personally was ever denied medical treatment on a specific day because of the
24 alleged transportation policy. Similarly, plaintiff alleges, “many inmates have
25 suffered injuries,” and that “hundreds of thousand [sic] of men and women have
26 been subjected to” pain and suffering in “San Bernardino County” while “enroute
27 [sic] to court daily.” (ECF No. 1 at 5-6.) Yet the only allegation set forth
28 concerning *plaintiff* is that “I was injured numerous times.” (*Id.* at 5.) Such a

1 generalized allegation, without any supporting facts, fails to meet plaintiff's burden
2 of showing that he personally suffered an injury-in-fact that is concrete and
3 particularized. As a *pro se* litigant, plaintiff may not vicariously assert the
4 constitutional claims of others. *See Johns v. County of San Diego*, 114 F.3d 874,
5 876 (9th Cir. 1997); *United States v. Mitchell*, 915 F.2d 521, 526 n.8 (9th Cir. 1990)
6 (a *pro se* litigant does not have standing to raise the claims of other persons whose
7 rights may have been violated). Moreover, plaintiff may not establish the Article
8 III standing necessary for the Court to have jurisdiction in this action by resting his
9 claim to relief on the legal rights or interests of other parties. *See, e.g., Coalition of*
10 *Clergy*, 310 F.3d at 1163.

11 Because plaintiff is appearing *pro se*, the Court must construe the allegations
12 of the Complaint liberally and must afford plaintiff the benefit of any doubt. *See*
13 *Hebbe*, 627 F.3d at 342. The Court, however, is not "bound to accept as true a legal
14 conclusion couched as a factual allegation." *Wood*, 134 S. Ct. at 2065 n.5 (citing
15 *Iqbal*, 556 U.S. at 678). In addition, in determining the sufficiency of a claim, the
16 Court discounts allegations that are conclusory and unsupported by specific factual
17 allegations (such as "I was injured numerous times" (ECF No. 1 at 5)), which are
18 not entitled to a presumption of truth. *See, e.g., Salameh*, 726 F.3d at 1129.

19 Accordingly, the Court finds that plaintiff's allegations fail to establish
20 Article III standing because the Complaint does not set forth facts showing that
21 plaintiff was detained at the WVDC, that plaintiff was transported by an employee
22 of the WVDC, that plaintiff was transported using the method that he is challenging
23 in this Complaint, or that, on a specific day, plaintiff was injured because of the
24 transportation method that was used while plaintiff was being transported. Because
25 plaintiff does not allege sufficient facts to show that he suffered a concrete and
26 specific injury that was *caused by* the policy that he purports to challenge in this
27 action, he lacks constitutional standing to raise his claims, and this Court lacks
28 jurisdiction over this action.

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2 **B. Failure to comply with Rule 8**

3 Rule 8 requires that plaintiff alleges a minimum factual basis for each claim
4 that is sufficient to give a defendant fair notice of what plaintiff's claims are and the
5 grounds upon which they rest. Here, plaintiff's Complaint sets forth only general
6 conclusions about alleged injuries that many unidentified detainees suffered over
7 "the past 20 years." In addition, in his single "Claim I," plaintiff appears to also
8 reference a failure of unspecified individuals to provide "medical attention" at
9 unspecified times for unspecified injuries, and plaintiff alleges that he suffered
10 "medical neglect." Because plaintiff references what appears to be multiple claims
11 within one claim and does not set forth supporting factual allegations, plaintiff's
12 pleading fails to set forth a minimum factual or legal basis for each claim that is
13 sufficient to give a defendant fair notice of what plaintiff's claims are and the
14 grounds upon which they rest.

15 As noted above, because plaintiff is a *pro se* litigant, the Court must construe
16 the allegations of the Complaint liberally and must afford plaintiff the benefit of
17 any doubt. That said, the Supreme Court has made clear that the Court has "no
18 obligation to act as counsel or paralegal to *pro se* litigants." *Pliler v. Ford*, 542
19 U.S. 225, 231 (2004). Further, plaintiff's Complaint must be adequate to meet the
20 minimal requirement of Rule 8 that a pleading set forth sufficient factual allegations
21 to allow each defendant to discern what he or she is being sued for. *See McHenry*,
22 84 F.3d at 1177; *see also Twombly*, 550 U.S. at 555 ("[f]actual allegations must be
23 enough to raise a right to relief above the speculative level"). In addition, the
24 Supreme Court has held that, while a plaintiff need not plead the legal basis for a
25 claim, the plaintiff must allege "simply, concisely, and directly events" that are
26 sufficient to inform the defendants of the "factual basis" of each claim. *Johnson*,
27 135 S. Ct. at 347. Here, plaintiff's Complaint fails to set forth a simple and direct
28 statement of the factual or legal basis of any claim that is sufficient to allow a

1 defendant to discern what he or she is being sued for.

2 Further, plaintiff names an unidentified “transportation sgt.” as the sole
3 defendant, (ECF No. 1 at 3), but the Complaint does not set forth any factual
4 allegations that this defendant took any action. If plaintiff intends to raise federal
5 civil rights claims against any employee of the WVDC for inadequate health care,
6 he must set forth a short and plain statement of each such claim showing that a
7 specific defendant took a specific action, participated in another’s action, or omitted
8 to perform an action that caused each alleged constitutional deprivation. To state a
9 federal civil rights claim against a particular defendant, plaintiff must allege that a
10 specific defendant, while acting under color of state law, deprived him of a right
11 guaranteed under the Constitution or a federal statute. *See West v. Atkins*, 487 U.S.
12 42, 48 (1988). “A person deprives another ‘of a constitutional right, within the
13 meaning of section 1983, if he does an affirmative act, participates in another’s
14 affirmative acts, or omits to perform an act which he is legally required to do that
15 causes the deprivation of which [the plaintiffs complains].’” *Leer v. Murphy*, 844
16 F.2d 628, 633 (9th Cir. 1988) (quoting *Johnson v. Duffy*, 588 F.2d 740, 743 (9th
17 Cir. 1978) (emphasis and alteration in original)). In addition, “[g]overnment
18 officials may not be held liable for the unconstitutional conduct of their
19 subordinates under a theory of respondeat superior.” *Iqbal*, 556 U.S. at 676.
20 Accordingly, plaintiff must allege that a specific defendant “through the official’s
21 own individual actions, has violated the Constitution.” *Id.* at 676-77 (“each
22 Government official, his or her title notwithstanding, is only liable for his or her
23 own misconduct”).

24 Finally, irrespective of his *pro se* status, plaintiff must comply with the
25 Federal Rules of Civil Procedure and the Local Rules of the United States District
26 Court for the Central District of California. *See, e.g., Briones v. Riviera Hotel &*
27 *Casino*, 116 F.3d 379, 382 (9th Cir. 1997) (“*pro se* litigants are not excused from
28 following court rules”); L.R. 1-3. Pursuant to Fed. R. Civ. P. 10, the body of a

1 complaint must include all defendants listed in the caption of the pleading.
2 Plaintiff's Complaint does not have a caption that lists any defendants.
3 Additionally, plaintiff must comply with the Local Rules regarding the format of a
4 pleading, such as L.R. 11-3.2, which requires that the lines on each page be
5 numbered and that no more than 28 lines of double-spaced text be on each page.
6 Plaintiff must also sign and date his pleading, if he decides to file a First Amended
7 Complaint. (See L.R. 11-1.)

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10 **C. Failure to state a claim against the defendant in his/her official capacity**

11 The Complaint names one defendant, and that defendant is named only in his
12 or her official capacity. (ECF No. 1 at 3.) The Supreme Court has held that an
13 "official-capacity suit is, in all respects other than name, to be treated as a suit
14 against the entity." *Kentucky v. Graham*, 473 U.S. 159, 166 (1985). Such a suit "is
15 not a suit against the official personally, for the real party in interest is the entity."
16 *Graham*, 473 U.S. at 166. Accordingly, any claim against a defendant who is
17 alleged to be employed by the WVDC in his or her official capacity is treated as a
18 claim against the WVDC.

19 A local government entity such as the WVDC "may not be sued under
20 § 1983 for an injury inflicted solely by its employees or agents. Instead, it is when
21 execution of a government's policy or custom, whether made by its lawmakers or
22 by those whose edicts or acts may fairly be said to represent official policy, inflicts
23 the injury that the government as an entity is responsible under § 1983." *Monell v.*
24 *Dep't of Social Servs. of City of New York*, 436 U.S. 658, 694 (1978); *see also*
25 *Connick v. Thompson*, 563 U.S. 51, 60 (2011) ("local governments are responsible
26 only for their own illegal acts"). Further, "[g]overnment officials may not be held
27 liable for the unconstitutional conduct of their subordinates under a theory of
28 respondeat superior." *Iqbal*, 556 U.S. at 676. Accordingly, plaintiff may not hold

1 the WVDC liable for the allegedly unconstitutional conduct of its employees.

2 In the present case, the Complaint fails to set forth any factual allegations
3 that a specific policy or custom promulgated by the County was the “actionable
4 cause” of a specific constitutional violation. *See Tsao v. Desert Palace, Inc.*, 698
5 F.3d 1128, 1146 (9th Cir. 2012) (“Under *Monell*, a plaintiff must also show that the
6 policy at issue was the ‘actionable cause’ of the constitutional violation, which
7 requires showing both but for and proximate causation.”). Plaintiff alleges that a
8 “policy” has been used for “20 years or more” to transport inmates on “5-man
9 chains.” (ECF No. 1 at 1.) Plaintiff also references “dangerous policies
10 implemented by the WVDC Transportation Department,” (*id.* at 5). It is not clear
11 to the Court if plaintiff is purporting to allege that the WVDC has one formal policy
12 that caused plaintiff to suffer an injury, or if plaintiff is purporting to allege that the
13 “Transportation Department” has used different policies that are “dangerous” over
14 the time that plaintiff was detained at the WVDC. Because plaintiff’s Complaint
15 fails to set forth factual allegations concerning the implementation of the specific
16 practice or custom of the WVDC that he alleges was a “traditional method of
17 carrying out policy,” the nature of plaintiff’s claim or claims is unclear.

18 Accordingly, the Court finds that plaintiff’s Complaint fails to set forth
19 factual allegations sufficient to allow the Court to draw a reasonable inference that
20 any employee of the WVDC (in his or her official capacity) is liable for any alleged
21 constitutional violation. *See, e.g., Iqbal*, 556 U.S. at 678.

22 For these reasons, the Court finds that plaintiff’s Complaint violates Rule 8
23 and fails to state a claim against any defendant upon which relief may be granted.

24 *****

25 **If plaintiff still desires to pursue this action, he is ORDERED to file a**
26 **First Amended Complaint no later than thirty (30) days after the date of this**
27 **Order, remedying the pleading deficiencies discussed above.** The First
28 Amended Complaint should bear the docket number assigned in this case; be

1 labeled "First Amended Complaint"; and be complete in and of itself without
2 reference to the original Complaint, or any other attachment, or document.

3 The clerk is directed to send plaintiff a blank Central District civil rights
4 complaint form, which plaintiff is encouraged to utilize. Plaintiff is admonished
5 that he must sign and date the civil rights complaint form, and he must use the
6 space provided in the form to set forth all of the claims that he wishes to assert in a
7 First Amended Complaint.

8 In addition, if plaintiff no longer wishes to pursue this action, he may request
9 a voluntary dismissal of the action pursuant to Federal Rule of Civil Procedure
10 41(a). The clerk also is directed to attach a Notice of Dismissal form for plaintiff's
11 convenience.

12 **Plaintiff is further admonished that, if he fails to timely file a First**
13 **Amended Complaint, or fails to remedy the deficiencies of this pleading as**
14 **discussed herein, the Court will recommend that the action be dismissed with**
15 **prejudice on the grounds set forth above and for failure to diligently**
16 **prosecute.**

17 **IT IS SO ORDERED.**

18
19 DATED: 7/26/2018



ALEXANDER F. MacKINNON
UNITED STATES MAGISTRATE JUDGE